

## REMARKS

Claims 1-7 were pending in the application. Applicants have cancelled claims 4 and 7, and added claims 8-22. Favorable reconsideration and allowance of this application is respectfully requested in light of the amendments and the foregoing remarks.

### **1. Allowable Subject Matter**

Applicant wishes to thank the Examiner for indication of the allowable subject matter of the application. The Examiner indicated that claims 4 and 7 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant has cancelled claim 4 and added new claim 15. Also, Applicant has cancelled claim 7 and added new claim 20. Allowance of new claims 15 and 20 is respectfully requested.

### **2. Rejections under 35 U.S.C. 103(a)**

Claims 1-3, 5 and 6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Patent No. 4,728,045 to Tomaszek (hereinafter “the ‘045 patent”) in view of U.S. Patent No. 5,913,399 to Takemoto et al. (hereinafter “the ‘399 patent”). Claims 1-3 and 5 are also rejected under 35 U.S.C. 103(a) as being unpatentable over Patent No. 5,375,541 to McGann (hereinafter “the ‘541 patent”) in view of the ‘399 patent. Applicant traverses these rejections because the cited references do not teach each and every limitation of the claimed invention.

Claim 1 recites a method of conveying particulate material from an air seeder having a container with a floor for holding a supply of said particulate material and a

metering mechanism for dispensing said particulate material, the method comprising the steps of allowing said particulate material within said container to drain by gravity into said metering mechanism; sensing a shortage of supply of said particulate material to be dispensed from said metering mechanism as a result of said allowing step; and rotating an auger housed within a trough in a floor member of said container to deliver any remaining particulate material within said container to said metering mechanism.

First, the '045 patent does teach or suggest an auger housed within a trough in a floor member to deliver any remaining particulate material within said container to said metering mechanism. The Examiner is mistaken that the alleged auger 79 and trough 73 are located in a floor member 76 of the container 71. In fact, the '045 patent states that "the trough 73 is located well above the tank bottom 76" (col. 6, lines 36-40; *see also* Fig. 3).

Also, '045 patent does not teach allowing said particulate material to drain by gravity into a "metering" mechanism. The alleged metering mechanisms 28, 47 by the Examiner are merely "outlets" from the tank 71. There is no teaching or suggestion that the outlets 28, 47 are "metering" the scrap material passing therethrough.

Moreover, the '045 patent has nothing to do with "an air seeder", yet alone an "air seeder" having "a metering mechanism" as recited in claim 1. Rather, the '045 patent discloses a "floatation" method classifying scrap resin material from lightweight resin material (See Abstract). The alleged tank is filled with water and/or detergents, etc. for floating lower density materials while allowing heavier density material to sink (col. 6, lines 20-36). Even if one were to assume that the '045 patent teaches a tank for

holding a supply of particulate material, other aspects of the '045 patent teaches away from air seeding. At best, were the '045 to be combined with the '399 patent, the logical approach would be to also provide a floatation medium in the medium in the tank to cause lighter particulate material to float and heavier particulate material to sink, in direct contravention of a method of conveying particulate material from an air seeder. To do otherwise, would be to pick and choose amongst the isolated teachings of the individual references, using the Applicant's own disclosure as a template or mosaic to latch on to those teaching that support the Examiner's position while ignoring those that do not. The Federal Circuit has held that a rejection based on obviousness cannot be predicated upon such an approach:

It is impermissible within the framework of the section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.

*In re Hedges*, 228 USPQ 685, 687 (Fed. Cir. 1986), citing *In re Wesslau*, 147 USPQ 391, 393 (CCPA 1965); see also MPEP §2143.01.

The '399 patents fails to cure these foregoing deficiencies. The '399 patent has nothing to do with an air seeder. Rather, the '399 patent discusses a coin handling mechanism 200 for dispensing coins to a slot machine (col. 11, lines 1-27). Moreover, the '399 patent does not teach or suggest the step of sensing in response to allowing the coins to drain by gravity into a metering mechanism, as recited in claim 1.

The '541 patent discusses a machine for inserting particulate solids in the soil. (See Abstract). The '541 patent does not discuss an "air seeder" with a container for

allowing said particulate material within the container to drain by gravity into a metering mechanism. Moreover, the '541 patent does not teach a trough in the floor of the container. Rather, the '541 patent teaches a mechanical type machine for inserting material in the ground (See Abstract). The machine includes a wave type vane 45A that moves in side to side fashion along the shaft axis such that the material falls into a bin outlet 44 (col. 3, line 22-47). The '541 patent teaches that the vane 45A includes blades with a series gaps therebetween configured to carry (illustrated by the arrow) the particulates over the bin outlet 44 (See Fig. 8). The supply of material is determined by the hopper 31 is determined by the rate of rotation of material hopper van shaft 30 (col. 2, lines 30-33). This teaches away from allowing the particulate material in the container to drain by gravity into a metering mechanism, as recited in claim 1.

Again, the '399 patent fails to cure this deficiency, for reasons similar to those described above. Also, there is no motivation or suggestion to combine the coin dispensing machine of the '399 patent with the machine described in the '541 patent.

Thus, the cited references do not teach each and every limitation of the claimed invention. Moreover, there is no motivation or teaching to combine the floatation separator discussed in the '045 patent, or likewise the machine discussed in the '541 patent, with the coin quantity detection mechanism described in the '399 patent. Thus, the cited references fail to teach or suggest each and every limitation of the claimed invention. Reconsideration and allowance of claim 1 is respectfully requested.

Dependent claims 2-3 and 5-6 are believed to be in condition for allowance for incorporating by reference the limitations of claim 1 and for defining additional features of the invention, which, when considered in combination with those of claim 1, are not taught or suggested by the prior art relied upon in the rejection.

### **3. New Claims**

New claim 8 recites the method of claim 1, including the additional step of pressurizing the container. New claim 9 further recites that the step of pressurizing in claim 8 is performed by a fan mechanism connected to provide a supply of air to the container. New claim 10 recites the method as recited in claim 1 such that the metering mechanism is located at one end of the container and the floor of the container is sloped from a distal end of the container relative thereto toward the metering mechanism. New claim 11 recites the method as recited in claim 1 such that the step of rotating the auger is performed only when the step of sensing indicates a shortage of supply of said particulate material to be dispensed through the metering mechanism. New claim 12 recites the method as recited in claim 1 such that the floor includes a first V-shaped configuration and a second V-shaped configuration converging at the metering mechanism, and the trough is located at a lower apex of each of the first and second V-shaped configurations. New claim 13 recites the method as recited in claim 1, further including the steps of sensing a sufficient supply of said particulate material to the metering mechanism; and stopping rotation of auger in response to the step of sensing the sufficient supply of said particulate material to the metering mechanism. New claim 14 recites the method as recited in claim 1,

wherein the step of sensing the shortage of supply of said particulate material is performed in a product box of the metering mechanism; and further including the step of conveying said particulate material from the container into the product supply box of the metering mechanism.

New claim 15 recites a method of conveying particulate material from an air seeder that includes the allowable subject matter of claim 4.

Dependent claims 16-19 are believed to be in condition for allowance for incorporating by reference the limitations of claim 15 and for defining additional features of the invention, which, when considered in combination with those of claim 15, are not taught or suggested by the prior art relied upon in the rejection.

New claim 20 recites a method of conveying particulate material from an air seeder that includes the allowable subject matter of claim 7.

Dependent claims 21 and 22 are believed to be in condition for allowance for incorporating by reference the limitations of claim 20 and for defining additional features of the invention, which, when considered in combination with those of claim 20, are not taught or suggested by the prior art relied upon in the rejection.

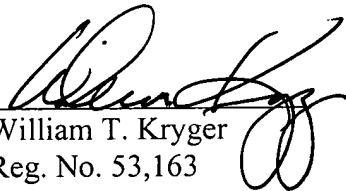
### **CONCLUSION**

It is submitted that claims 1-3, 5-6, and 8-22 are in compliance with 35 U.S.C. §§ 103 and define patentable subject matter. A Notice of Allowance is therefore respectfully requested.

A fee of \$120.00 for a one-month extension of time is believed due with this communication. Nevertheless, should the Examiner consider any other fees to be payable in conjunction with this or any future communication, authorization is given to direct payment of such fees, or credit any overpayment to Deposit Account No. 50-1170.

The Examiner is invited to contact the undersigned by telephone if it would help expedite matters.

Respectfully submitted,

  
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